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GERSH KORSINSKY
APARTMENT 4B
1236 49th STREET
BROOKLYN NY 11219

In re Application of:
Korsinsky, Gersh, et al.
Serial No. 10/672561
Filed: September 29, 2003
Docket: None
Title: USERS WATER STORAGE

DECISION ON RENEWED PETITION UNDER 37 CFR § 1.181

This is a decision on the renewed petition filed on September 06, 2007 under 37 CFR § 1.181 requesting review of the examiner's action. There is no fee for this petition.

The renewed petition is denied.

Essentially, Petitioner believes his rights have been abrogated by the examiner's final rejection. Attention is directed to the decision dated July 20, 2007, which decision was in response to Petitioner's previous petition filed September 15, 2006. The decision summarizes the prosecution history and provides discussion upon which the decision was based.

A further review of the prosecution reveals that applicants had ample opportunity to amend the claims and appeal to the Board of Appeals. The issues raised by the examiner are not of arbitrary and capricious actions but involve thoughtful reasoning. These issues are appealable and not petitionable in accordance with Federal statutes and regulations.

The renewed petition fails to add anything new that is persuasive to cause reversal of the previous decision. The decision is maintained.

One further note on petitioner's comments with respect to constitutionality. Reference is made to *Graham et al. v. John Deere Company of Kansas City et al.; Calmar, Inc. v. Cook Chemical Company; Colgate-Palmolive Company v. Same;* 383 US 1; 148 USPQ 459 (U.S. 1966). An excerpt from this U.S. Supreme Court precedential decision:

At the outset it must be remembered that the federal patent power stems from a specific constitutional provision which authorizes the Congress "To promote the Progress of * * * useful Arts, by securing for limited Times to * * * Inventors the exclusive Right to their * * * Discoveries * * *." Art. I, § 8. The clause is both a grant of power and a limitation. This qualified authority, unlike the power often exercised in the Sixteenth and Seventeenth Centuries by the English Crown, is limited to the promotion of advances in the "useful arts." It was written against the backdrop of the practices-eventually curtailed by the Statute of

Monopolies-of the Crown in granting monopolies to court favorites in goods or businesses which had long before been enjoyed by the public. See Meinhardt, Inventions, Patents and Monopoly, pp. 30-35 (London, 1946). The Congress in the exercise of the patent power may not overreach the restraints imposed by the stated constitutional purpose. Nor may it enlarge the patent monopoly without regard to the innovation, advancement or social benefit gained thereby. **Moreover, Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available.** Innovation, advancement, and things which add to the sum of useful knowledge are inherent requisites in a patent system which by constitutional command must "promote the Progress of * * * useful Arts." This is the standard expressed in the Constitution and it may not be ignored. And it is in this light that patent "validity requires reference to a standard written into the Constitution." A. & P. Tea Co. v. Supermarket Corp., supra, at 154, 87 USPQ at 306. **Within the limits of the constitutional grant, the Congress may, of course, implement the stated purpose of the Framers by selecting the policy which in its judgment best effectuates the constitutional aim.** [Emphasis added.]

The creation of the PTO with its powers and duties, as established by Congress, are set forth in 35 U.S.C. §§ 1 and 2 as well as other sections of the Federal code. The examiner's Office action, accordingly, is set forth within parameters established by the Constitution and Federal statutes.

It is to be noted that the present applicant's application is abandoned. As stated in 37 CFR § 1.181(f):

> The mere filing of a petition will not stay any period for reply that may by running against the application, nor act as a stay of other proceedings.

Applicant has taken no further action to maintain the application in a pending status and is, therefore, abandoned, in accordance with the Notice of Abandonment mailed August 08, 2007. Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

A. Failure to reply was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (3) the $255.00 petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

B. Failure to reply was unintentional.

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply; (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (3) the $770.00 petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

The required items and fees must be submitted promptly under a cover letter entitled "Petition to Revive."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of the Deputy Commissioner for Patent Examination Policy
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: 571-273-8300
Attn: Office of Petitions

Telephone inquiries with respect to reviving the application should be directed to the Office of Petitions Staff at (571) 272-3282. For more detailed information, see MPEP § 711.03(c).

Please note that there is no guarantee that a revived application will later be allowed and issued as a patent. As part of the parameters towards this, there must be allowable, claimed subject matter and the application must be in full compliance with Federal statutes and regulations.

Petitioner is entitled to file a request for reconsideration of the decision on petition, and any such request must be filed within two months of the date of this decision. See 37 CFR § 1.181 (f). Alternatively, the petitioner may precede under 37 CFR § 1.137. Either the request for reconsideration or the petition to revive should be directed to the Office of the Deputy Commissioner for Patent Examination Policy at Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. See MPEP 1002.02.

PETITION DENIED.

Any inquiry regarding this decision should be directed to Allan N. Shoap, Special Program Examiner, at (571) 272-4514.

Karen M. Young

Karen M. Young, Director
Technology Center 3700